HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G.V. SEETHAPATHY

WRIT PETITION No. 10467 OF 2006

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Between:

S. Jaya Pratap Goud

……Petitioner

And

B. Narasimha Raju and four others

……Respondents

:: ORDER ::

Counsel for the Petitioner : Sri I. Venkata Prasad

Counsel for Respondent No.1 : Sri V. Venugopala Rao

Counsel for Respondent No.2 : Government Pleader for Endowments

Counsel for Respondent No.3 : Sri S.I. Newton

Counsel for Respondent No.4 : Government Pleader for Revenue

Counsel for Respondent No.5 : Government Pleader for Archeology

Dated: 17-07-2006

Per G.S. SINGHVI, CJ

In this petition filed as a piece of public interest litigation, the petitioner has prayed for issue of a direction to the official respondents to take action against respondent No.1 – B. Narsimha Raju in the matter of raising illegal construction of the shopping complex near the site known as “Rani Chatram”.

In paragraphs 4 and 6 of his affidavit, the petitioner has averred as under:

> “4. I humbly submit that the illegal construction of the 1st respondent vacant place originally towards the west of RANI CHOWLTRY which was built in about 115 yrs ago in memory of the “QUEEN VICTORIA OF ENGLAND AND EMPRESS OF INDIA IN BRITISH DAYS”. In that vacant place, there exists an old and ancient Aswatha Vruksham coupled with NEEM tree, having undergone usual and customary WEDDING about more than 50 years surrounded by a pial where some devotees had also installed NAGAPPA DEVATHA IDOLS in and around the trees on the pial. On my allegations to the Media and Press the ETV2 Media has Videographed all these bamboo business persons, bunks and illegal constructions around the “RANCHATRAM” and displayed the same on their ETV2 on the dates 28-10-2005, 2-11-2005, 10-11-2005 continuously.
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> 6. I humbly submit that “MOSALLABAVI” is situated in the prime locality of Rayadurg town, adjoining to the southern side of old bus stand in S.No.230A1m Govt. poramboke land. It is a historical monument of India. and land mark of Vijayanagara Empire has been constructed 500 years ago. Along the four sides of the wall stone steps were constructed. It has carved stone pillared Mantapas of Architectural Sculptures. It is a heritage of India. It has a stone masonry temple of length 50 feet, breadth 20 feet, height 12 feet. Ganapathi and other goddesses sculptures present in the walls of the temple. The E.O. Narasimha Raju closed down this “MOSALLABHAVI” unauthorisedly. Actually this well, which situates in the Sy.No.230A1, Govt. Poramboke land hereafter called as GP land belong to Archeological Survey of India, Central Government Department undertaking. The E.O. has no right or manner over this monument of India. When I made complaints

to the higher officials about this matter, the E.O. has issued me a defamation legal notice on 3-11-2005. in the notice page No.2 he replied to my allegations. In para No.3 of reply he accepted the closure "MOSALLABAVI" with the permission of concerned higher authorities. But, when I enquired the matter with Assistant Commissioner, Endowment Department, Anantapur, he has replied that no permission he granted to close the "MOSALLABAVI". And the same is telecasted in ETV2 about the damaged to be sanctity of the ASWARTHA tree on 28-10-2005 at 1-30 p.m. The same fact is also published Praja Shakti News Paper on 27-10-2005."

In the counter-affidavit filed by him, respondent No.1 has averred that the construction is being made with the prior sanction of the competent authorities without affecting the place of worship. Rather, it is meant to protect the site from encroachments and is in the interest of the institution. He has further averred that 'Mosallabavi' was closed with the prior permission of Assistant Commissioner, Endowments, Anantapur in Rc.No.5/3769/2001/Admn. Dated 7-5-2002. The filling up of well had taken place in 2002. Respondent No.1 has also alleged that the petitioner had approached him to allot two shops out of the proposed complex and when his demand was not accepted, he filed the writ petition.

The counter-affidavit filed by Sri A.B. Krishna Reddy, Commissioner of Endowments, Andhra Pradesh is supportive of the case set up by respondent No.1. The averments contained in paragraphs 5 to 9 of the reply of Sri A.B. Krishna Reddy are extracted below:

"In reply to Para No.5 it is submitted that the sacred trees are protected and maintained well. In fact the authorities have taken care in installing Idols and in constructing the pial in the interest of devotees and there is no inconvenience caused to the devotees. So far as maintenance of this pial, it is improved more now. The allegations raised by the writ petitioner in this regard is totally incorrect. There is no inconvenience caused to devotees, in fact as stated supra existing place of worship is developed in recent days providing more facility and there is no truth in this allegation.

In reply to Para No.6, according to the petitioner there is 500 years old structures being monument and heritage having national importance. But, Rani Choultry, itself is constructed in the year 1889 and mentioning of 500 years history is nothing but exaggeration. There are no sculptures as stated by the writ petitioner and the petitioner may be put to strict proof in this regard. There is only water lifting stone structures. Permission was sought in proceeding dated 29-4-2002 by the Executive Officer and the same is considered by the Assistant Commissioner in proceeding dated 7-5-2002, with due approval, 1st respondent has filled the said well with soil. The allegations in this regard are totally misleading. The water of this well was not useful for drinking. Regarding news item published in Praja Shakthi, it is submitted that initially the said news paper published something on the basis of the writ petitioner. But the local people and merchants reacted seriously and made representations to the said news reporter to publish real facts. On such public response, a counter version to the petitioner's version is also published on 6-11-2005. it is stated that the writ petitioner who involved in Matka business is making baseless allegation for his personal gain and there is no truth in the earlier news item published on 27-10-2005. It is also stated that no donations are paid by them to the Executive Officer.

In reply to Para No.7 it is submitted that the allegation made by the petitioner is not true, and the 2nd respondent take action immediately after receiving his representation dt.20-3-2006 duly referred the matter to the Assistant Commissioner, Endowments Department, Kurnool as already stated supra.

In reply to Para No.8 it is submitted that there is no conflict between maintaining place of worship and proposed construction of shops. The petitioner made application before M.L.S.A. (Mandal Legal Services Authority). Counter was filed and contested the matter. The petitioner could not make out any case before the said forum.

In reply to Para No.9, it is submitted that it is true that the suit is filed against the Municipal authorities and a contractor, when they intended to make construction of lavatories in the place belonging to Rani Choultry. The written statement of a private individual stating that said land belonging to Archeological Department have no consequence and there is no truth, and the said person is not competent to certify the same. It is submitted that in response to this office letter dated

15-6-2006, the Director, Archeology and Museums, A.P., Hyderabad in their letter dated 15-6-2006 has informed that Musallabhavi at Rani Choutry, Rayadurg (V & M), Anantapur Dist. Is not a protected monument of their Department. Further in response to this office letter dated 15-6-2006 the Superintending Archeologist, Hyderabad in their letter dated 15-6-2006 has informed that Musallabhavi in Rayadurg village does not fall under purview of Archeological Survey of India. It cannot be a ground for the writ petitioner. So far as the title in respect of the said land is concerned, it is submitted that the said land is vested with the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act 30/87 by virtue of G.O.No.284, L dated 10-3-1905 of Local and Municipal Department, Government of Madras. The Government in G.O.Ms.No.701, Revenue (Endts.) Department, dated 8-12-1995 have accorded permission to Rayadurg Municipality to acquire land attached and belonging to Rani Choultry, Rayadurg under the provisions of Land Acquisition Act. Aggrieved the said orders Sri P. Venugopal Reddy and another filed Writ Petition 1192/96 and this Hon'ble Court in W.P.No.1192/1996, dt.23-4-2004 was pleased to set aside G.O.Ms.No.701, dated 8-12-1995. The contractor cannot state anything about the title. Moreover, the Government of Madras, Finance Department, issued a notification on 15-4-1921 duly declaring the Ancient Monuments as protected Monuments as per Section 3 sub section 1 of the Ancient Monuments Preservation Act, 1904 (VII of 1904), but the said Rani Choultry is not in the said notification. When there is no cause of action survives, the suit is not further pursued. It is nothing to do with the present dispute. At present no construction is going on, it will be made after approval of competent authorities and hence the petitioner may be put to strict proof in this regard."

Smt.K. Bhagyalakshmi, Commissioner, Rayadurg Municipality (respondent No.3) has filed a separate affidavit stating therein that respondent No.1 filed O.S.No.33 of 1997 in the Court of Junior Civil Judge, Rayadurg for proving title over the disputed property. The same was dismissed in default on

9-12-2005 and no step was taken by the said respondent for restoration of the suit. In paragraph 12 of her affidavit, respondent

No.3 has averred that on coming to know of illegal construction being raised by respondent No.1 in the property bearing Door Nos.9-1-14 to 17 in Survey Number 230/A1 on the western side of Rani Choultry, notice dated 31-5-2005 was issued under Section 228 (1) and (2) of the Andhra Pradesh Municipalities Act, 1965 (for short 'the Act') asking him to remove the construction. This was reiterated vide notice dated 13-7-2005 issued under Section 228 (3) of the Act. However, respondent No.1 did not remove the construction and, therefore, it has been decided to take action against him as per law. According to respondent No.3, respondent No.1 made an application dated
4-1-2006 for permission to construct shopping complex in the vacant place around Rani Choultry. The same was rejected vide endorsement dated 17-1-2006 on the ground that no document showing ownership/title has been produced. He was directed to produce the documents along with Topo detailed plan and Encumbrance Certificate afresh, but the needful has not been done so far. Reference has also been made to G.O.Ms.No.701 dated 8-2-1995 issued by the government whereby the Municipality was directed to acquire the land attached and belonging to Rani Choultry by following the land acquisition proceedings. The Commissioner, Endowments was directed to hand over possession of the same to the municipality. This was challenged by Ex-Member of the Legislative Assembly in Writ Petition No.1192 of 1996 without impleading the municipality as party. The writ petition was disposed of by the High Court on
23-3-2004 with a direction to the respondent to follow the due process of law. In that view of the matter, the acquisition of the land is under consideration.

At the hearing, learned counsel for respondent No.1 made a statement that his client will not raise any construction without obtaining necessary sanction from the competent authority. Learned

counsel for respondent No.3 stated that if construction is made without obtaining sanction from the competent authority, action will be taken in accordance with law.

In view of the stand taken by the Municipal Commissioner and counsel representing respondent No.1, we do not consider it necessary to pass any order on the prayer made by the petitioner and dispose of the writ petition with the observation that the concerned authority of the Rayadurg Municipality shall take appropriate action in accordance with law, if any illegal construction is raised by respondent No.1.

G.S.SINGHVI, CJ

G.V. SEETHAPATHY, J

17-07-2006
svs